[Mr. V. Subba Aiyar.]

THE NAIR REGULATION AMENDMENT BILL.

PRESIDENT: We will now resume the discussion on the Nair Regulation Amendment Bill. Mr. Subba Aiyar.

MR. V. SUBBA AIYAR: Sir, I was speaking yesterday on the question of partition provided for in the bill. I said then that so far as I can remember, the *Marumakkathayam* Committee recommended *thavazhee* partition and the bill before the Council in 1087 accordingly provided for *thavazhee* partition. The bills of Mr. Velu Pillai and Mr. Raman Tampi were only for *thavazhee* partition. But, now, individual partition is advocated. I also said yesterday that there could be no objection whatever to provide for individual partition if we are satisfied that the general sense of the community is for it. Unfortunately, we are not in a position to know definitely whether the majority are for individual partition or not. I doubt whether this House will be justified in introducing individual partition. If the general sense of the community has to be ascertained, it may be necessary to record evidence either by a commission or at least by the Select Committee; and that would mean a lot of time. That apart, the points of difference between the advocates of the two kinds of partition are very few and the veil is very thin. I do not think that it would be to the interest of the community to draw the veil off for the sake of some fancied advantage, without annoying the general sense of the community. Those who are for *thavazhee* partition say that, during the life-time of the common ancestress, there should not be any partition and that it is only after her death that the partition should be effected. Even if we allow individual partition when the mother or the grandmother is alive, I do not think any Nair *tarwad* will ordinarily be inclined to effect partition. Though the Hindu law allows individual partition and the children are entitled to claim partition from the father, the cases in which this is effected are very few indeed. Even if the provision for individual partition is passed, we may say that, in the generality of cases, individual partition may not be effected during the life-time of the mother, as she will be in a position to exercise a unifying influence on the *tarwad*. We shall, therefore be, on safe grounds if we allow *thavazhee* partition now. In Mr. K. Parameswaran Pillai's bill also, the individual partition that is contemplated is of a very restricted type. In one place in his bill, it is distinctly stated that the partition which should be effected should be only *thavazhee*, and in another place it is said that partition should be claimed only by those who have completed 25 years of age. I do not see the reason why it should be 25; why can it not be 35 or 45? Unless we know the general sense of the community, we are not in a position to fix the age. Much can be said for and against *thavazhee* and individual partition. We are not to be guided by those arguments. We are to be guided only by what the community wants. If the community wants individual partition, let them have it. But until we know that the community wants it, I think we will not be justified in inserting

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such a provision. Mr. Kumara Pillai himself was not prepared to assure us that the individual-partitionists are in the majority. And, therefore, unless we have definite statistics in the matter, it will not be possible to introduce individual partition. This is all that I have to say about individual partition.

Then there is another clause—clause 28—which says that the individual share of a *marumakkathayee* should be liable to be seized in the execution of a decree. That clause, I beg to say, will lead to considerable difficulties. To my mind, it is a measure which is revolutionary in character. Even in the case of the *Mitakshara* law, a coparcener's share is liable to be sold only if it has been attached during his life-time. But in the bill it is provided that, until the division takes place, each member is deemed to have a definite share in the *tarwad* liable to be seized in execution.

The next question raised was with reference to the succession of the Nair wife and children to the estate of the non-Nair husband. I fear I am treading on rather dangerous ground. Some members have already spoken on the matter and I do not wish to dwell any further upon it. But there are certain aspects of it which I wish to place before the Council; and I believe the House will bear with me for a few minutes. In matters of this kind, there will be a difference of view. As a mover of Government bills, I have had to meet oppositions to them. I believe I will be excused if I state certain points for the consideration of the House. Our duty here is not to argue out cases as in a court of law where somebody else decides, but to weigh all the arguments advanced on both the sides, to form our own judgments and to decide for ourselves. Some of the views that we express now may be wrong; but we change them on examination, discussion and consultation with our colleagues. With these reservations, I beg to make certain observations in connection with the question raised. Certain statements were made in regard to persons following the *Mitakshara* law. I do not want to quarrel with those statements, for they are purely academical in their character. Mr. K. Paramesvaran Pillai read out a portion from a work on Hindu law to show that the testators take care to see that the difference between the *Mitakshara* and the *Dayabhaga* schools of inheritance are reconciled. I think that a person who inherits the estate of another is bound to perform the religious oblations of the other, on whatever principle it may be based—whether it is due to propinquity or otherwise. The performance of the religious rites *does* play a prominent part in the matter of succession to the property of a person following the *Mitakshara* law dying intestate. If it is a case of disputed inheritance, the person who performs the religious oblations has a preferential right.

MR. N. PADMANABHA PILLAI: May I ask whether, in recent years, the marriage laws and laws relating to inheritance in civilised countries are not passing from a theological to a secular basis?

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR: Very well, it may be so. But here I am not speaking anything about that; I am only controverting the proposition laid down by Mr. Krishna Aiyar yesterday that, if the marriage is legal, as a matter of course succession follows. Till the Regulation of 1088 (the Nair Regulation) was passed, although the marriage was legal, it was not regarded that the children had any right to the property of the father. Similarly, in the case of the Nambudiries who follow the *marumakkathayam* law, property is not inherited by the son though the marriage is legal. It may be said that, under the English law or under the Salic law, all the children do not inherit, though the marriage is undoubtedly valid. Mr. Padmanabha Pillai was saying that we are going from the theological to the secular point of view to determine the line of succession. Of course, people may do so; but in such cases, the parties affected by the principle must also agree to it. In other words, their consent must also be taken. I will come to the point presently.

The next point that we have to take particular care of is to see that this law is not retrospective in character. My friend Mr. G. Parameswaran Pillai struck the correct note when he said that the marriage was contracted with open eyes and that therefore the non-Nair husband's estate should be made liable for the legitimate shares of the children of the non-Nair husband. I admit that proposition. But I say that the proposition could apply only to future cases and not to past ones. In such cases, the Nair lady chose to marry the non-Nair husband on the understanding that she would not be entitled to claim any portion of his estate.

MR. K. PARAMESVARAN PILLAI: What becomes of the Law Member's proposition that the law which applies to cases of inheritance applies at the time the inheritance opens?

MR. V. SUBBA AIYAR: We are concerned here with a case where the husband and the wife do not have the same personal law. In the cases of Ezhavas, the husband and the wife are governed by the same personal law. At the instance of the community, its personal law was being modified. We are dealing now with a case where the parties are governed by different personal laws and governed by different religious rites and usages. We are trying to change the personal law of the husband without his asking for it and probably when he is against it. Therefore, to give a retrospective effect to this law will be prejudicial to one community though beneficial to the other. A community forming the majority will not be justified in enacting a law affecting another community which is in a minority, unless the sense of that minority is ascertained. If the majority of the latter community do say that they are perfectly agreeable to the present proposal, then, certainly we will be justified. We are not in a position to know the views of the Nair ladies who have married non-Nair husbands, nor of such husbands. The marriages were contracted at the time under the impression that the Nair wife will not be entitled to succeed to the husband property.

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MR. T. K. VELU PILLAI: Does that not apply to the Nair husband also?

MR. V. SUBBA AIYAR: I have sufficiently explained it. If both the husband and the wife belong to the same community, it is immaterial if the law is changed. But if the communities are different, the law may act prejudicially as vested rights might have accrued to non-Nair wives and children.

MR. G. PARAMESVARAN PILLAI: I wish to know whether the idea of inheritance had any part to play at all in the originally contemplated marriage transaction.

MR. V. SUBBA AIYAR: I believe so. Everybody knew that the Nair children had no right to the property of the non-Nair husband. Marriages were contracted under that distinct understanding. I am strengthened in this observation by the following words in the report of the *Marumakkathayam* Committee:

"The great majority of high-caste Nairs above alluded to are for retaining them (marriages between non-Nairs and Nairs) *even without inheritance of the husband's self-acquisitions by the children.*"

The committee have said that the great majority are for the marriages between the two communities continuing.

MR. P. K NARAYANA PILLAI: It is only a few witnesses who have said that.

MR. V. SUBBA AIYAR: No. There is a great majority. This is what the report says:

"Even if such unions should be discouraged as a few of the witnesses seemed to think, the *great majority* of the high-caste Nairs above alluded to are for retaining them even without inheritance of the husband's self-acquisitions by the children."

Therefore no idea of inheritance existed in the minds of the parties concerned at the time of the marriage. Again, at page 31 of the *Marumakkathayam* Committee's report, we find:

"The utmost the legislature can do is not to emphasise caste distinction by preventing the fusion of castes in the process of social evolution. Such fusion though in active operation now between sub-divisions of the same Sudra castes is as yet a far remote contingency as between that and the higher castes. It is true that *sambandhams* do take place between males of these castes and Nair females, and in the case of some Nair families in the Quilon and Kottayam Divisions, *sambandhams* are performed only by *Dwijas* (Brahmins or Kshatriyas) because they think it degrading to marry Sudras; and they never think of claiming any share of the properties of the *Dwijas* though such husbands do make provisions for their Nair wives and children. The sanctity thus attached to a union of this sort has made it a necesssity in many cases and Mr Raman Pillai remarks that such *sambandhams* are really not 'invasions' but 'invitations.' We can offer only one of two alternatives to such families, *viz.*, either to give up such 'invitations' and perform *sambandhams* with their own caste-men which, we learn, is not impossible, or, to be satisfied with the maintenance which we propose to allow in the case of such unions also."

That is a deliberate statement made by the *Marumakkathayam* Committee. In the face of these remarks, I do not think that it is fair to give a retrospective effect to such marriages. Let us go and examine further. We find—and I believe Mr. Krishna Aiyar was one of the

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[Mr. V. Subba Aiyar.]

gentlemen who accepted the proposition—that, even in the case of non-Nairs, it is the duty of the husbands to make provision for their wives and children. Supposing we pass this law, what will be the result? The Nair wife and children may have been, in the majority of cases, provided for and they will in addition get one-half of the remaining property. Thus they will get the major portion of one's property and be in a better position than the caste-wife and children. Again, the mover of the bill does not seem to have reconciled himself to the Hindu Wills Regulation which applies to all Hindus. In that Regulation, it is said that, if any person is entitled to share the intestate's property, that person can will away only one-half of the property. Under the present bill, the Nair son of a non-Nair father will be entitled to a share in the property of the latter dying intestate. So long as that child is alive, the father of the child is not at liberty to will away the whole of that property. The benefit that is now given to a Nair under the Nair Regulation, to an Ezhava under the Ezhava Regulation, to a Christian under the Christian Regulation, is not given to other Hindus. Therefore the families of non-Nair husbands are at a disadvantage.

MR. K. P. RAMAN PILLAI: I am prepared to accept the abrogation of that clause.

PRESIDENT: Which clause, Mr. Raman Pillai?

MR. K. P. RAMAN PILLAI: That clause in the Hindu Wills Regulation.

MR. V. SUBBA AIYAR: But that is not in the bill as drafted. The Wills Regulation applies to all Hindus who have or have not marital relations with other communities, so that, unless we expunge that clause in the Hindu Wills Regulation, the present provision will be too drastic and premature. I do not think it fair that the parties who have been married before now should be affected. In the Cochin Nair Regulation there is a provision which allows the parties to a marriage to say that they shall not be affected by the regulation. The principle embodied in that is that it will not be proper to impose on a person who has contracted a marriage, which is a civil contract, an obligation which was not upon him at the time when he entered into that marriage. It is for this purpose that an enabling provision has been put in. The same was put in in Mr. Tampi's bill and in Mr. Velu Pillai's bill. But that does not find a place in this bill. Even if it is introduced here, it may not serve any useful purpose as the parties will not be willing to go and say that they will not be bound by the regulation. The provision will not prove wholesome to the proper exercise of marital relations between the parties. That being the case, I do not think it desirable to give retrospective effect in a matter of this kind. As for the future, I am perfectly sure that, if the law is passed,

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a non-Nair who marries a Nair with open eyes must subject himself to the restrictions the regulation imposes upon him. I am in perfect agreement with Mr. Kumara Pillai's argument that, if it is possible, such marriages should be avoided. I hope that public opinion will express itself against such marriages coming into force.

Again, when we say that the Nair wife and children should take one-half, it is necessary to take into consideration the legitimate religious charges upon the properties of the deceased. When we are speaking of the marriage of a Nair with a non-Nair and trying to give a line of inheritance to the issues of such marriage, it is absolutely necessary for us to take into consideration the rights of the wife who is subject to the personal law of the husband. I do not see why we should change that law and say that the Nair wife and children shall get one-half. I beg to submit that it is rather hard. I am willing to concede that the Nair wife and children should be given all the privileges of the caste-wife and her children. But in conferring such rights and privileges, certain safe-guards are necessary. The first thing is that the charges for the funeral rites should be provided from the estate of the deceased. Mr. Paramesvaran Pillai said that this might be done But I may observe that the salvation of a man's soul does not stop as soon as the funeral obsequies are performed. There are other ceremonies also which have to be performed. It is, therefore, necessary to set apart a definite amount for that purpose. For this, Mr. Raman Pillai has provided for the succession of the property of the Nair male by the Nair father or mother. While he has provided for a share in the Nair intestate's property for the father or the mother, I do not know what prevented him from providing for the father or the mother in the case of a non-Nair intestate. I think, in the interests of the soul of the person who is dead, a similar provision should be inserted in the case of the non-Nair husband also. If there are no caste-wife and children or undivided heirs, and if there is no father or mother, the divided heirs are under an obligation to perform the religious oblations. If no property is left to the divided heirs, the result will be that an obligation will be thrown upon them to perform the religious oblations without giving them any right to any portion of the property which will enable them to discharge those obligations.

MR. T. K. VELU PILLAI: I wish to ask a question. I want to know if the charges for *sraddha* expenses are to be first met from the assets of the family in preference to the self-acquired property of a deceased person.

MR. V. SUBBA AIYAR: The existence of ancestral property leads only to further complications. In many instances, there may be no ancestral property at all. If, however, there is ancestral property, the extent of it will have to be ascertained and also whether it will be enough to meet the charges. In many cases, if there is a nucleus of ancestral property, the self-acquisition will become family property and this will lead to unnecessary litigation. All these facts will have to be considered in coming to a definite conclusion as to what the share

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[Mr. Paul V. Daniel.]

should be whether it should be one-half or less. As I have already observed, we will be throwing an obligation upon the heirs who have to perform the religious oblations, without a corresponding right to the property of the deceased, if we do not make any provision for it. The funeral rites and other ceremonies will have to be performed with due regard to the status of the intestate. Unless some provision is made, the obligation is not likely to be properly discharged. This is a matter to be seriously taken into consideration.

Then I come to the question of the marriage of the daughters by the caste-wife. It has been sufficiently dealt with by many of my friends. Marriage is a religious sacrament and an obligation. And the non-Nair intestate should, therefore, make some provision for his unmarried daughters. This has also to be taken into consideration. I do not wish to say anything definitely now, as the matter will be satisfactorily threshed out by the Select Committee. I only want to give expression to what I consider to be necessary in the matter. I have expressed the difficulties that confront us in the matter so far as it relates to non-Nair husbands. I hope I have not stated anything which is objectionable or which would wound the feelings of the Nairs. If I have unwittingly said anything objectionable or, in any way, offended anybody, I very much regret it and I hope I may be excused.

MR. T. K. VELU PILLAI: I want to know what is the position of a non-Nair husband in Cochin who marries a Nair wife in Travancore after the Cochin Nair Regulation was passed.

PRESIDENT: The question does not arise now. Mr. Subba Aiyar need not answer that question.

MR. V. SUBBA AIYAR: The Cochin Nair Regulation need not guide us. The Cochin Regulation was passed not by a large Council with fifty members as we have here now, but as the result of the recommendations of a committee appointed by Government. The questions were not discussed in open Council in all their aspects and therefore there may be defects in the Cochin Regulation.

There is one more matter on which I wish to speak before I close. That is about the clause relating to monogamy. I do not very much appreciate the existence of that clause. To my mind, monogamy will not take us far unless divorce is restricted and made possible only under exceptional circumstances. A free divorce with only a small fine attached to it will not serve to better the principle underlying monogamy. I am, however, indifferent as to whether that particular clause is retained or deleted.

With these remarks, I agree to the bill being read in the Council.

MR. PAUL V. DANIEL: The present bill before this Council seeks to introduce a *makkathayam* far in advance of that obtaining either under the Travancore Christian Succession Regulation or the

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Hindu law. One feels bound to congratulate the Nair community for trying to take such a bold step. In advocating the cause of the Nair females and the nature of the partition the Nair community should adopt, reference was made in this House by some member (I should say, wrongly) to the Travancore Christian Succession Regulation. The *makkathayam* desired by the Nair community or even a section of it is not found in this regulation. In the Travancore Christian Succession Regulation, the female children are not treated on an equality with male children. They are entitled at the most only to a *stridhanam* equal in value to one-fourth of a son's share subject to a maximum limit of Rs. 5,000. Then the general treatment accorded to the females is of a lower type than the one accorded under Hindu law, and the one that is, of late, sought to be given under it. For instance, when, under the Hindu law, a Hindu widow gets a qualified estate known as "widow's estate" over the *whole* property of the deceased husband, a Christian widow gets under the Travancore Christian Succession Regulation only a "life estate" (inferior in quality to a Hindu widow's estate) over only one-half of her deceased husband's property. Under the Christian Succession Regulation, then, we have not the *makkathayam* which we wanted or as Christians we ought to have. The precaution the Nair community has to take in adopting any measure not obtaining in *makkathayam* as followed by other communities is that they should adopt such a measure only if they are absolutely certain that it would work to the general advantage of their community.

Then, in the case of recognised conjugal unions of Nair females with caste non-Nair males, the desire of the community is that such unions should receive the sanction of the law applicable to them. The object of introducing in the bill some clauses in this connection is to attach to such unions the solemnity and responsibility they do really require. To a mere loan borrowed by one governed by *Mitakshara* law an obligation of extreme solemnity and responsibility is attached. The subject-matter of such a transaction is only some lifeless object or objects, whereas the subject-matter of the transaction in question is human life or lives. Should not then some legal obligation be attached to this solemn and sacred transaction? It was in this connection that Mr. T. K. Velu Pillai pertinently asked Mr. Rangaswami Aiyangar a question. If such conjugal unions should continue to exist, the caste non-Nair should as far as possible agree to come under the law applicable to the Nair community. When once such conjugal union is made valid by statute, the difficulties, if any, arising from personal or any other law must really vanish. It is the duty of this House then to help the community in its honest attempt to realise this legitimate and sacred desire, by amending, if necessary, the provisions connected therewith, guided wholly by sound principles of law and equity and not by any personal considerations. With these few observations, I heartily support the principle of the bill.

MR. P. K. NARAYANA PILLAI: Sir, with reference to the bill under discussion, I rise to support the main principles, which, I see, are

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but imperfectly reflected in the provisions thereof. I also think that the learned mover of the bill has committed certain incautious errors. For instance, in clause 13, when he laid down the rules in connection with intestate succession, the direction to deduct the amount required for payment of legacies reveals a clear confusion of ideas. All the same, I trust to the intelligence of my friend Mr. Raman Pillai as also to his steadiness of purpose and his readiness to profit by discussion and advice. I hope that errors of the kind mentioned by me will be rectified and a proper bill will be placed before the House on its emergence from the Select Committee. This is all the share of criticism I have to offer at this stage of the bill.

I now proceed to defend the main provisions of the bill, making an incidental attempt to defend myself as well. In making these observations, I wish it to be distinctly understood that I am very anxious not to stir up inter-communal irritation, but to foster, as far as possible, cordial relationship between the various communities in the land. The criticisms that have been levelled against the main provisions of the bill, when analysed, will be seen to centre round three main heads, *viz.*, (1) with respect to the question of clause 13 B, which provides for a right of inheritance in the case of a non-Nair husband or father, as the case may be; (2) with respect to the question of polygamy; and (3) with respect to the question of individual partition.

I propose, first of all, to take up the first two objections. They are practically questions which deal with the "foreign relations" of the Nair community. I may concede the force of the criticisms that have been raised against the question of polygamy by Mr. Krishna Aiyangar and reiterated by my friend Mr. Subba Aiyar. As Mr. Subba Aiyar observed, it is, after all, a matter of indifference to me also whether this particular provision is maintained or not. Further, I would also consider that, in trying to introduce a provision of that description in the measure before the House, we are unnecessarily trenching upon the personal law of a number of people. The requirements of the situation do not seem to call for the same. Whatever, therefore, be my personal opinion on this particular point, so far as the legislative attempt that has been made with respect to the question of polygamy or monogamy is concerned, I am prepared to concede the force of the criticism of my learned friends referred to above.

The next point of criticism that I have to meet is the criticism that has been raised with respect to intestate succession to the property of a non-Nair husband by a Nair wife. There, I would, first of all, examine the extreme position that has been taken up by Mr. Trivikramar Vasudevar. He, I thought, would have been the first in the field to support this mild claim of the Nair community. But he must have got himself so much excited over the question as to employ provocation in the place of argument and pawky cynicism in the place of reasoned criticism. I was very sorry to find such an attempt on the part of a member of this

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House and a member of the Malabar Brahmin community. He even went on to accuse the mover of the bill of having provided in it a trap or clap-net for Mr. Poti's community, which, he said, was downright fraud and circumvention. That, I beg to submit, resembles the protest of a habitual thief, who, being encouraged in plying his nefarious trade owing to the absence of watchfulness on his neighbour's part, is heard to complain bitterly of the vexatious precautions of the neighbour in closing the door upon his depredations. Mr. Poti called in question the right of the Nair community to enact a law of the kind now under discussion. But, at the same time, he conceded that, if the community wanted it to be so, they could introduce a measure forbidding all marital relations with non-Nairs. Here is a more gentle provision. If he says that the Nair community is at liberty to prohibit all marital relations with members of any other community, I think he will not quarrel with a milder provision which says that they can have marital relations *provided* they submit to certain conditions. So, when the member conceded the absolute right of the Nair community to disallow such intermarriages, he is not logical in saying that the community is not competent to qualify the prohibition by appropriate conditions.

Now, I proceed to examine another line of criticism, that is to say, that which was based on the doctrine of 'seeking-after', put forward by Mr. M. Raja Raja Varma M. A., B. L. That, again, was a piece of surprise to me, for, so far as that learned member's community is concerned, my information is that they are but left with what is called Hobson's choice in the matter. The male members of his community cannot marry the female members of the same community. They have necessarily to form alliances with Nair females, and to say that marriages effected by members of his community are the result of 'seeking-after' by the Nair community, appears, under the circumstances, to be quite unbelievable. This suggestion of 'seeking-after', evidently had a tinge of sneer about it, so much so, that ,when the esteemed Deputy President pointed out that the question should not be viewed from a point of 'seeking-after', since all marriages necessarily involve the consent of two parties—I thought that the matter would be dropped without any further reference to it. But even after hearing the learned Deputy President, the view was re-iterated by another member, may be Mr. Udaya Varma Raja who has been co-opted for the purposes of this bill. But for such repetition, I would never have alluded to this theory of 'seeking-after' which was probably brought up to suggest the logical conclusion that so long as two people agree to do a particular thing in any way they want, no other person has any business to interfere with the free course of their joint venture.

MR. M. UDAYA VARMA RAJA: I wish to inform Mr. Narayana Pillai that I did not say that the woman sought after the husband.

MR. P. K. NARAYANA PILLAI: I am sorry if my memory has deceived me. I apologise to him. If he did not say so I am glad of it. My esteemed friend Mr. M. Raja Raja Varma asked what

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[Mr. P. K. Narayana Pillai]

business anybody had to dictate to them. To my mind, it appears, Sir, that, unlike the case of any other agreement, a contract of marriage gives rise to various considerations as regards its invariable consequences. Sexual intercourse between two persons proceeds upon their voluntary union. But, such a proceeding generally brings into existence a number of uninvited guests—I mean children—who make their appearance in spite of your disinclination to have them. It is a question over the consequences of which the contracting parties, whatever may be their desire, have little control. Ultimately the State has to face the consequences of such alliances. These consequences, whether they be the result of 'seeking-after', undue influence or circumvention, have a material bearing upon the well-being of the State and cannot be brushed aside on the plea of the parties to the marriage that they never bargained for such unwelcome outturn and indeed prayed devoutly that such results should not ensue. In such circumstances, I say it is in the interest of the State to see that proper provision is made to meet the demands arising out of the situation. Therefore, that angle of vision and the suggestion implied in what I called the 'seeking-after' doctrine, do not arise at all for serious consideration.

Then a further head of criticism had reference to trenching upon the personal law of certain communities. There, in the first place, I am submitting that that argument has been advanced in all its seriousness in practical oblivion of the existence of sections 1 and 3 of Regulation I of 1088 (the Nair Regulation). These sections clearly apply to non-Nairs who contract marital relations with Nair females. So the present law, as it stands, clearly has application to a number of people outside the Nair community. Such being the case, to say that the personal law of other people has been encroached upon in the present bill is certainly an argument without any weight. After having kept straight on with the Nair community to the point of valid marriages, should these people be now allowed to break away and leave the Nair community in the position into which it has been lured? My contention is that they should not be permitted to do so. It will be prejudicial to the Nair community. You agreed that you would stand by us; you contracted marital relationship with our females; you came along with us; but when you come to the question of responsibilities, you say that you do not accept the course you set out on and say: "My personal law is a more serious thing with me than this alliance that I have contracted with your females!" Now, Sir, to say the least, there is not much of grace in such an attitude. Again, for a long time in the past and distinctly in 1088, you made us understand that you had no objection to your personal law being set aside just to enable you to marry Nair females. Mr. Rangaswami Aiyangar, while he was speaking, was invited by me to consider the personal law as it stands at present. He treated the present law as a matter of precedent and told me ultimately that he is an infidel regarding all precedents. All the

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same, he told us that his personal law had to be respected. If the existing law is to be regarded only as a matter of precedent, I raise the question whether the so-called personal law of his is not also a question of precedent. That is to say, if the Hindu *Mitakshara* law about which he has been so keen is only a precedent, than we have to come to the logical conclusion that he is an infidel with respect to that also. I am willing to agree with him in thinking that the Hindu *Mitakshara* law may be regarded as a matter of mere precedent, say, like the Nair Regulation, according to him. Precedents do not weigh with me if they do not weigh with him. When he says that he does not set any store by precedents, and at the same time wants to take his stand upon the *Mitakshara* law which after all is, according to him, only a piece of precedent, his argument at best appears to me to be quite inconsistent. So, that line of argument is not destined to succeed. Apart from it, as a matter of fact, is there any attempt in the present bill to trench upon anybody's personal law? My submission is there is none. The personal law of the communities that would be affected by the present enactment is the law which is known in Hindu jurisprudence as the *Mitakshara* law. So far as the *Mitakshara* law is concerned, it is very clear that that system does not in the least encourage the marriage of a Brahmin with a non-Brahmin. So, when the adherents of the *Mitakshara* law think that they are at liberty to contract marital relations with Nair females, certainly they are prepared to disregard or overstep the sphere of their personal law. Therefore, when they violate the so-called personal law themselves, can they be heard to say that the consequences of their actions should not follow? Holding themselves in readiness to infringe the Hindu law and infringing it as convenience suits them, *i. e.*, to the necessary extent of marrying non-Brahmin females, when it comes to a question of inheritance or succession, our Brahmin friends should not seek to set up the same personal law to defeat the claims of their wives and children. If they issue forth from the stronghold of their personal law, let them not withdraw themselves into the tortoise-shell of the same law, at the mention of their liabilities. That is an undignified and unreasonable position. So much with respect to the followers of the Hindu *Mitakshara* law.

Then we have got a number of other non-Nairs who generally marry Nair females. On the whole, the non-Nair element may be classified under three heads; (1) foreign Brahmins following the *Mitakshara* law; (2) Malabar Brahmins, Kerala Kshatriyas (that is Rajas and Tampurans) and occasionally Ambalavasies. As regards the Kerala Brahmins, etc., I shall examine the position. Their position is not at all defensible. It is a matter of common knowledge that there is a wide prevalence of marriages between the Nair females and these Brahmins and Kshatriyas, observable in various parts of Kerala. Let us go back a little into history. The High Court of Travancore has held that the Nambudiries immigrated into Kerala long before the compilation of the text of the *Smriti* associated with the name of *Yajnavalkya*. I go further and venture to think that, even before the stage of Hindu law as

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compiled in the text of *Manu*, the Nambudiries must have been in Kerala. My reasons are as follows. The primeval order with respect to holding of property among Hindus is the system of impartible holdings. And that is exactly the system that even now prevails in the Kerala Brahmin community. When we come to the period of *Manu*, the great law-giver oscillates between partibility and impartibility and solves the problem on the strength of his personal prediliction. According to him, since partition would stimulate the multiplication of virtue, partition is commendable. Again, in spite of the rancorous hatred with which *Manu* views marriages of Brahmins with females of other classes, especially Sudra women, he lays down the forms for the solemnisation of marriages between Brahmins and other people. For the solemnisation of the marriage union, *Manu* makes the Sudra bride hold the fringe of the cloth when the Brahmin marries her. My own individual opinion—and I want the Council to give it only such value—is that this particular vestige has been developed into the system known as *sambandham* accompanied by the presentation of cloth here. I am pointing to these facts only for the purpose of showing that the Brahmins immigrated into Kerala long before the days of *Manu*. We can understand the position subsequently taken up by *Yajnavalkya* who is only a later *Smriti* writer, on the question of the marriage with Sudra girls. *Manu's* revolt against the marriage of Sudra women by Brahmins is pretty intelligible. I would refer the House to a series of contributions in the *Calcutta Weekly Notes* by Pandit K. P. Jayaswal. He points out that the code of law written in the name of *Manu*, called *Manu Smriti* was written as a counterblast against *Chanakya's Artha Sastra*. *Chanakya* has provided for equality of treatment for offenders of all classes. When the dynasty of *Chandragupta* came to a close and the *Sunga* dynasty came into prominence, the Brahmins managed to enact a system of law in the name of *Manu*, a name that we meet with in the *Rig Veda*. The underlying purpose of *Manu Smriti* is the revival of Brahminism which got eclipsed under the *Mauryans* and a corresponding attempt at the degradation of the Sudra class to which the *Mauryans* belonged. But, even in such a code, we find that marriage between the two castes is not omitted. Such being the case, we can easily believe that, at the time of the immigration of the Kerala Brahmins into the Kerala country, they could not have considered the marriage of Brahmins with Sudra women with any dislike or disfavour. But the Hindu law beyond the ghats assumed in course of time quite a stiff turn. There the discouragement of Brahmins marrying Sudras received strong support in subsequent years with the result that such marriages were absolutely forbidden *in toto*. But the Kerala Brahmins continued their practice of contracting such marital relations in the Kerala territory. We find this practice recorded in the literature of the Puranic period. I refer to the *Skanda Purana* where we find that the Kerala Brahmins are reproached for marrying Sudra women. In course of time when intercourse between the people on both sides of the ghats increased, and the

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taunts of their brethren beyond the ghats got impressed on them, the Kerala Brahmins became uneasy and began to disown the true nature of their marital relations with other people here. To proclaim the altered outlook, spurious works in all the dignity of the Sanskrit language were composed, such, for example, as the *Kerala Mahatmya*. It is very difficult to mention the provisions of that work without creating a blush. For example, it says that, in the Kerala territory under the ordinances of Sri Parasurama, there should be no chastity; that all women in Kerala are for the enjoyment of the Brahmins; and so forth. These are some of its modest provisions. The ultimate result of all this was that a mass of such offensive literature, evidently written by Malabar Brahmins, gave them sanction to wallow in a morass of immorality.

Fortunately or unfortunately, the Nair community and some other communities in Kerala accepted Hinduism. I admire the undeniable sublimity and grand truths of Hinduism with its philosophic sub-stratum and lofty ideals. But alongside of the golden tenets of Hinduism, a number of pseudo-religious principles, which have been gradually smuggled in, got embedded—principles, which have ultimately percolated the whole society and tend considerably to smother the true light of religion. The ascendancy of the Kerala Brahmins may be marked in various fields. Even the power of the sovereign seems to have been eclipsed and to have given way before the flowing tide of Brahminical authority, so much so that, when the *Chera* Kings were predominant, the administration was carried on according to the will of the Brahmin. The Brahmins were the law-givers and expounders of law with the natural result that we see, in Malabar and South Canara, a system of inheritance which, even if it was not originally laid down by them, had at any rate been propagated by them, and which is even now functioning under the names of *marumakkathayam* and *aliyasantanam*. The system is peculiar to the regions where the old *Chera* Kings held sway. As I said, the position that was ultimately reached by the then law-givers, the Kerala Brahmins, is this, *viz.*, that there is nothing like a valid marriage among the Hindus of Malabar except among the Brahmin community. The ground having been prepared for such intellectual slavery and moral thraldom, it must have been quite a smooth sail for the Brahmins in life's troublesome voyage.

When the East India Company stepped in and established their own courts, this was the position they found. The subtlety of the Brahmin was too much even for the sturdy commonsense of the Englishman who used to be kept groping in the dark by the Brahmin, without being enabled to see the true position. For example, I would refer to the first judicial bomb that was thrown at the *marumakkathayam* community by a pronouncement of the High Court of Madras in a criminal revision petition. I am referring to the judgment in 6 Madras, 374, to which Mr. Justice Muthuswami Aiyar was also a party. The learned judge, after considering the system of *aliyasantanam* law, comes to the horrible conclusion that there is no such thing as marriage in that system and that any man is at liberty to

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abduct any woman. This bomb thrown by the Madras High Court seems to have created a regular shock throughout Malabar and South Canara, as may be seen from the report of the Malabar Tenancy Committee in which Mr. K. R. Krishna Menon's opinion illustrates what I said. In subsequent cases also, we see that the same view is adhered to by the same learned judge. That was the sort of esteem that the *marumakkathayam* law was receiving in Madras.

In our own High Court, matters were practically in the same condition. In the pronouncement reported in 20 T. L. R., Narayanaru Narayanaru *versus* Kunjikutti Kutti, two learned judges of the High Court of Travancore came to diametrically opposite conclusions in their attempt to apply the Hindu *Dharma Sastras* to the Nair community with respect to the question of marriage. It is surprising that it never occurred to the learned judges that *Manu* or *Yajnavalkya* could not have even dreamt of the Nair community when they compiled their codes. One judge who sat with these two learned judges in the case referred to above, I mean Mr. Justice Hunt, for whose infidelity to or imperfect attainments in the *Smriti* literature one feels a little grateful, a straight-thinking plain-spoken sort of an English gentleman, did not, however, allow himself to be swayed by the cobwebs of Brahminical writings and must have regarded the attempts of his learned colleagues as not far removed from the process of extracting sunshine out of cucumbers. The question according to him was one of common fairness, equity and good sense. He said it was only natural to expect that a man who is responsible for the birth of children should bear the responsibility of maintaining them. That is one of the points of view that I would request this House to consider.

It was after that decision of the High Court reported in 20 T. L. R. that the consciousness of my community was aroused as to the light in which their marital relations were viewed by the legal tribunals. It was a strange and inconsistent situation that was brought about by the High Courts of Madras and Travancore; for when any question relating to *putravakasam* property, or *makkathayam* property as it is called here, arose, paternity and valid marriage were conceded by the Courts. Thus then, when the validity of the marriage-tie was presented to the side-view of the courts, it used to be recognised; but, when raised frontally, it met with no recognition. It was to remedy this state of affairs that the Nair Regulation of 1088 was enacted. And in that regulation it was enacted that the alliance contracted by Brahmins, whether Malabar Brahmins or Tamil Brahmins with whom custom allows marriage, is a valid legal marriage.

After all this, I am surprised to see that the agitation on the basis of personal law has been raised in this Council. I have referred to the history of this question at some little length for the purpose of convincing the House and our friends of the Malabar Brahmin and Kshatriya communities of the incalculable mischief that has been done to the Nair

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community in the past. I hope the Brahmins will realise and remove the unmerited stigma cast upon other communities by their ancestors. I expected that they would be the first in the field to carry on the work of remedying social abuses and to restore social well-being. Instead of that, when the Nair community strives hard to better its lot and to rise above the baneful influence of pseudo-religious doses systematically administered and taking effect as intellectual opiates, when the light of western civilisation is available to prove the hollowness of the superior claims put forward by other communities, I find, to my utter surprise, Mr. Poti and others showing their teeth at the idea of the bill now before the Council.

I invite the attention of the Malabar Kshatriya community to consider whether their postition is any whit impaired by supporting the Nair community in this particular respect. Under these circumstances, I would even suggest that the Kshatriyas not only will have to sympathise with this measure but will have themselves to take advantage of the provisions of this bill to better their own condition and remove the stigma clinging to their commnnity. I am not putting this forward in any spirit of exciting communal rancour, but in a spirit of good neighbourliness and friendliness. I am submitting for the serious consideration of this House that this cry with respect to the alleged violence aimed at the personal law of others is a cry without any basis. It is an unrighteous cry and cannot be listened to with equanimity. If these gentlemen say that they have got a personal law of their own, they can clearly keep themselves within the pale of that personal law. After interfering with the personal law of the Nair community, can it be said that they are entitled to take shelter under their personal law.

The main difference between the Hindu *Mitakshara* law and the *marumakkathayam* system lies in the matter of marriages under both the systems. Once you concede the force of marriage in the *marumakkathayam* law, I shall prove to your satisfaction that the difference will get attenuated and that the closest approach will be made by the one to the other. Let me quote a distich from *Yajnavalkya* on the subject of inheritance. Says he:

"പത്നീദുഹിതരശ്ചൈവ
പിതരൗതസ്യരിക്ഥഭാക്"

and so on. That is to say the inheritance goes in the following order, namely the wife, daughters (their sons), parents, brothers and so forth. In a system which does not recognise a legal marriage, no claim can be started by a wife, daughter or daughter's son. Then we come to parents. There the mother precedes the father according to the *Mitakshara*, and so in the *marumakkathayam* system, mother is the starting point in the order of succession. With the introduction of a legal marriage into that system, the wife, sons, daughters and daughter's children become one's heirs and claimants on intestate succession. The existing regulation recognises marriages and thereby lifts *marumakkathayam* to the level of

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the *Mitakshara* system. The difference thus between the two systems is quite insignificant. In that view of the matter, is there any serious violence to anybody's personal law? Messrs. Krishna Aiyangar and Subba Aiyar, in addressing their elaborate arguments from a standpoint of one-sided tenacity, were very sensitive on account of the *Mitakshara* law and urged that, in these extra-communal marriages, they cannot divorce themselves from considerations of their personal law. Why? I ask. Why not also considerations of *marumakkathayam* law? The parties belong to two classes. Apparently they are particular that their *Mitakshara* law should prevail; we are equally keen that our *marumakkathayam* law should prevail. What is the guide that equity gives in the conflict of such opposing claims? That, I am submitting, is in my favour.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: May I ask whether both the laws do not act with respect to the question of devolution of property?

MR. P. K. NARAYANA PILLAI: I am sorry I do not hear Mr. Rangaswami Aiyangar.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: My question is whether, at the present time, in such cases as were referred to by Mr. Krishna Aiyangar and Mr. Subba Aiyar, both systems of law are not applied—the *Mitakshara* law where it is a question of inheritance of the property of the Brahmin father, and the *marumakkathayam* law where it is a question of devolution of property?

MR. P. K. NARAYANA PILLAI: The existing laws are entirely different.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Do I understand that, at the present time, that is not the case, and that, in the case of the woman belonging to the *marumakkathayam* law, the man does not follow his own law?

MR. P. K. NARAYANA PILLAI: I am again sorry I have not heard Mr. Rangaswami Aiyangar.

PRESIDENT: He asks whether it is the case that *marumakkathayam* law does not obtain in the case of the woman when the man belongs to the *Mitakshara* law?

MR. P. K. NARAYANA PILLAI: The *marumakkathayam* law does not obtain in the case of a non-Nair.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I understand Mr. Narayana Pillai to suggest that one alternative only is possible—either accept the *marumakkathayam* law or the *Mitakshara* law.

MR. P. K. NARAYANA PILLAI: That is not what I suggested. In the absence of the *Mitakshara* law and the *marumakkathayam* law, we have yet to come to some definite position. Even upon the interspace

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between the two laws, I was telling that the case has to be decided in my favour. And for that, I am referring to a few rulings in British India as well as in Travancore.

PRESIDENT: You have not yet quoted them.

MR. P. K. NARAYANA PILLAI: I am going to. Granted that there is a valid marriage, the question arises for consideration how the inheritance will have to be ascertained. Such questions have come up in the past. For example, 8 Madras, 213, is the case of a *makkathayam* Tiyyan marrying a *marumakkathayam* Tiyya woman. On the death of the husband, the question arose whether the children of the *marumakkathayam* woman were entitled to the property of the deceased *makkathayee* father. The Madras High Court said they were entitled. Then again, 92 Madras, 294, is the case of a *makkathayam* Mahomedan marrying a *marumakkathayam* Mahomedan woman. There was a similar decision. It was held by the Madras High Court that the *marumakkathayam* Mahomedan woman's children were entitled to the estate of the *makkathayam* father. The 8 Madras ruling was followed in Travancore in 9 T. L. R., 21, which was the case of a *makkathayam* Vellala man marrying a *marumakkathayam* Vellala woman. On the death of the husband, inheritance was regulated according to the *Mitakshara* law in favour of the *marumakkathayam* woman. The principle of the ruling in 9 T. L. R. has been referred to with considerable approval by Sir Sadasiva Aiyar, when he was the Chief Justice here. Now I ask, apart from these rulings how does the matter stand in the light of equity and public policy? The law has necessarily to be so moulded that it should be equitable to all communities concerned. That aspect of the question is prominently before the House. Let us attach the greatest possible solemnity and far-reaching importance to the marriage-tie, irrespective of the community to which the parties belong. Regulation I of 1088, by recognising the sanctity of marriage, has paved the way for this bill. The ordinary incidents of marriage include the subject of inheritance in civilized systems of jurisprudence and the attempt in this bill is to bring Regulation I into line with such systems. That is all that is involved in clause 13 B. This is therefore a matter which I thought would raise no difficulty whatsoever.

Then I proceed to consider the question of individual partition. The question has been approached from a number of standpoints. But there is one consideration which is essential in a discussion of the subject. What is the position of the *karanavan* is the question that I am raising for the consideration of my brothers on this side as well as on the other side of the House. The *karanavan* represents all the other members of the *tarwad*. The late Chief Justice Mr. Raman Menon said that the *karanavan* occupied the position of an agent and that persons dealing with the *tarwad* would have to deal with the *karanavan* in that capacity (33 T. L. R., 16). If that were the case, I ask why *karanavanship* should be regulated only by considerations of seniority of age and the question of sex. It is a case of enforced agency

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that is observed in the management of the *tarwad*. So, even if the junior members feel competent to manage their affairs without the agency of the *karanavan*, the law allows the *karanavan* to say: "You are not at liberty to mind your business; I am the man to mind your business". That is what is meant by *marumakkathayam* law as it is at present administered in the State. We have all heard about the growth of individual consciousness. As the world is constituted at present, it is the individual that counts and not the group of persons called a '*tarwad*' or a family. The question we often hear is whether the State can, and, if so, for what purpose and to what extent, place restraints on individual liberty. In spite of the fact that the junior members in a *tarwad* attain majority, they are treated as wards under the guardianship of the *karanavan* of the *tarwad*. Such being the position, I fail to see why the State should continue to recognise this enforced agency or why it should not remove the fetters forged by the so-called law on individual freedom, especially in view of the wish of a preponderating majority of the people affected. In this view of the matter—and all the troubles of the *tarwad* system may be traced to this—I would press that a measure of the kind proposed in the bill should be allowed. Then there are some economic questions. The *Marumakkathayam* Committee, according to the majority of them, find in favour of a number a small holdings as conducive to the welfare of the community. Probably it is not quite necessary to follow the "dismal science" in all its turnings and twistings. It is after all a matter of fairness that each man should be allowed to enjoy his own portion of the family property. We must view the whole question from a reasonable standpoint. My friends have been speaking about *thavazahee* partition. If all the evils that the *mdrumakkathayam* law is heir to have their source in the incompatibility of different *thavazhees*, I would have readily granted the reasonableness and adequacy of the cure suggested. But the fact is quite otherwise; and we see the individual at the bottom of the whole trouble. I would in this connection notice a reference made by my friend Mr. Padmanabha Pillai. The adherents of the present system are very anxious to safeguard the interests of the women in the community; and I had to examine their ground on the occasion of the Quilon Conference. So far as I have been able to study my community, my opinion is that the tears shed on account of women are either crocodile tears or the result of pure sentimentalism. The male members generally, including sons in the majority of cases, do not seem to care a jot about the welfare of the women in the *tarwad*. I invite the attention of my learned friend to the streams of women who may be seen to flow into the Chalai Bazaar at Trivandrum. It is certainly not the case that the *tarwads* of these women are devoid of male members. The fact then is that such male members do not concern themselves about their sisters and mothers who are therefore obliged to rely on their own exertions to keep body and soul together. That further illustrates the capacity of our women

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to look after their own interests when reduced to such positions. I may also bring to the notice of this learned assembly that a largely attended meeting of Nair ladies, held at Perumpavur, passed resolutions in favour of *makkathayam* and individual partition. A largely attended meeting at Marutankuzhi decided the issue the same way. A petition with seven thousand signatures, headed by the late Mr. Muraniyil Govinda Pillai was presented to the Dewan and His Highness, advocating *makkathayam* and individual partition.

MR. A. HOOGEWERF: May I know when Mr. Govinda Pillai died?

MR. P. K. NARAYANA PILLAI: He died, I think, during the time of the seventeenth session of the Popular Assembly.

A number of other representations may be quoted to prove the yearning of the community.

Mr. Panjikaran cast doubt on the wisdom of individual partition, in view of the comparative ease with which divorce may be obtained as provided for in the bill. I am of opinion that the existence of that provision safeguards the grant of individual partition. If the husband applied for divorce, he has necessarily to pay adequate compensation which will only better the position of the wife. When a wife applies for divorce, we may take it that she does so, being fully convinced of the certainty of bettering her lot. Take the case of a Nair lady who gets her share partitioned from her *tarwad*. If she finds her husband bent upon squandering the said share, should she not be allowed to get rid of him? So, in such cases, a provision for easy divorce will act as a safety-valve. If a man proves worthy in the eyes of his wife, it is difficult to believe that the wife will seek separation from him. The fair sex, noted for its proverbial subtlety, cannot be easily coaxed to give up an advantageous position or to run the risk of making the position worse.

MR. T. K. VELU PILLAI: I wish to ask a question. In the economy of the Nair household of the future, what would my friend have, either individual or *makkathayam* families?

MR. P. K. NARAYANA PILLAI: Individuals propagate *makkathayam* families. (*Laughter*). For the starting of *makkathayam*, there must necessarily be property. Unless you are prepared to give some property to junior members, you cannot facilitate the formation of *makkathayam* groups. Then there are misbehaving junior members in *tarwads*. They act as thorns on the side of the other members or as barbed arrows in the body of the *tarwad*, too difficult to be extracted. It is to the interest of the other members to remove such cantankerous junior members, giving them such shares as may be found due to them out of the joint property.

MR. T. K. VELU PILLAI: May I ask another question? I wish to know whether it will be possible to constitute a *makkathayam* family with the share obtained from the *marumakkathayam tarwad* of today by the wife, the husband and the children.

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PRESIDENT: I do not think that question arises here at all.

MR. P. K. NARAYANA PILLAI: Sir, Mr. Velu Pillai and myself may discuss the matter conveniently elsewhere.

MR. T. K. VELU PILLAI: I will, Sir. (*Laughter.*)

MR. P. K. NARAYANA PILLAI: It is desirable, Sir, that no one should be under the iron heels of another person. Why is the question of individual partition agitated at all? It is not for the wanton pleasure of throwing away the small share that a man may get. No, not for that purpose. It is the result of the play of the individual consciousness tending to break up the crude corporate existence of *tarwads*. If the junior members are agitating for individual partition for the purpose, say, of furthering the interests of their wives and children, I put it to the good sense of my friends on this side as well as on the other side of the House, why there should be any obstacle in the path of such members to part with whatsoever they are entitled to.

Then there is the objection raised by my esteemed friend Mr. Nilakanda Pillai that the alienation of *tarwad* property is a breach of trust. He said, if I heard him correctly, that, in view of what the acquirers of these properties had originally intended, the demand for partition is quite out of the question. It is a glorious principle and I wish it were possible to ascertain the scope and extent of the intentions underlying these acquisitions. Here we have got instances of all manner of alienations without caring for the posterity which is assumed to have been in the contemplation of the acquirers of these properties. Now if what Mr. Nilakanda Pillai assumed is the foundation of the *marumakkathayam* law, properties subject to that law should be handed down from generation to generation, keeping them intact till the deluge swallows them up. In the first place, such an intention, even if proved, is opposed to what we lawyers call the rule against perpetuities which, though of foreign origin, has been successfully introduced into India. Then I ask, where is the evidence of the intention that Mr. Nilakanda Pillai speaks of?

MR. N. NILAKANDA PILLAI: May I remind the speaker that what I said was that the right of a man in the *tarwad* property is undefinable, and that, if it can be defined, it is less than that of a woman.

MR. P. K. NARAYANA PILLAI: I have not heard my friend correctly then. So far as I have heard him as I thought, I have replied. For the satisfaction of my friend, I would state that, so far as the High Courts of Travancore and Madras are concerned, the position is very clear. Their Lordships of the Madras High Court say that it is on the basis of the co-ordinate rights of the members in the *tarwad* properties that what is known as maintenance allowance is decreed. As the law stands at present, every member is a co-ordinate owner with every other member. That view has been accepted by the High Court of Travancore. Now, if a majority of the members think it necessary that they

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should mind their own business and get rid of the *karanavan*, why should they not be allowed to do it? The view against individual partition must proceed from some definite cause. Some people no doubt are benefited by the existing state of affairs. Some persons have opportunities of pilfering a good deal. Then there are certain others who are only too ready to marry and are equally ready not to meet the obligations therefrom. Such people think that the present system is a very convenient arrangement for their wives and children, for they will be maintained by other people. Such persons are bound to oppose individual partition. Then there are others who conscientiously and honestly object to individual partition. They do so because they have been trained up in such traditions so long. I myself once upon a time was not free from doubt regarding the wisdom of individual partition or of any partition whatsoever. But after seeing the sort of turmoil and welter in the civil courts and observing the course of decisions in civil courts administering the *marumakkathayam* law, I think it would be to the interest of the State as well as the people to introduce individual partition. The State can in the interests of economy dispense with many judges and munsiffs. We shall also suffer. (*Laughter.*) Mr. Subba Aiyar and Mr. Krishna Aiyangar will also suffer. Looking at the wide welter of affairs in the civil courts and the possibility of reducing the number of judges, a battalion of clerks and a huge body of camp-followers (*laughter*) and in view to preventing idleness and drone-like habits in individuals, I think the only course available is to consider seriously the question of individual partition. Of course, there are certain safeguards necessary, and the Select Committee will see to them.

Some friends in this House said or hinted that, unless every man was consulted in this matter, no legislation should be undertaken. Of course, social legislation is passed in various fashions. We have heard of a piece of legislation known as the Deceased Wife's Sister's Marriage Act in England. The deceased wives were never consulted, but all the same it was enacted. Take the instance of the criminal law relating to adultery. The adulterers were not consulted before it was passed. Again, the *thuggee* was a religious organisation; but an act affecting them was enacted without consulting any one of them. (*Laughter.*)

So much as regards consulting the wishes of others. Then some people want to legislate in the line of least resistance. It is very good to follow the path of least resistance. But least resistance should not be confounded with no resistance. Regarding every legislation, some people would necessarily protest.

Then, again, the question of imposing the will of the majority on the minority was raised by Mr. Rangaswami Aiyangar. He is very fond of it. He raised it on the occasion when the Ezhava bill came up for consideration. Here it is not a case of the majority, but it is a case of the minority seeking to impose their will upon the majority. In spite of the puerile doubts cast upon the inter-censal growth of the Nair community by Mr. Murari S. Krishnamurti Aiyar, and his attempt to understate the numerical strength of the Nair community, their number is nearly seven

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[Mr. Tariatu Kunjitomman.]

lakhs—6,90,495 to be exact. The opposition is afforded by a set of communities, for example, the Tampurans and Koiltampurans, who number 1,651, of whom the males number only 980. To the Nair community, this represents a proportion of one to eight hundred. This is one of the communities that now protest against the passing of the bill. I would invite the consideration of the House whether it is not a case of the minority imposing its will upon the majority. Then take the case of the Malayalee Brahmins. Malayalee and non-Malayalee Brahmins all put together come to about forty-five thousand, of whom there is only a microscopic minority of Tamils. So far as the Tamil or Mahratta Brahmins are concerned, it is only an off-chance that they may be widely affected by the bill. So far as the other Brahmins are concerned, they have been imposing their will upon the Nair community for centuries. The attempt here is to wriggle out of that situation. But they seem to hold on to their view with limpet-like ferocity. This is the position with respect to the question of the majority imposing its will upon the minority. In this light also, there is absolutely no reason to discountenance the particular measure now before the House. With these observations, I have very great pleasure in supporting the principle of the bill for the acceptance of the House.

MR. TARIATU KUNJITOMMAN: നായർസമുദായത്തിൽ ഇപ്പോഴം നടപ്പിലിരിക്കുന്ന അവകാശക്രമം ആ സമുദായത്തിന്റെ അഭിവൃദ്ധിക്കു പൊതുവിൽ ഹാനികരമാണെന്ന് ആ സമുദായാംഗങ്ങളിൽ മാത്രമല്ല, അതിനോടടുത്ത് ഇടപെട്ടുവരുന്ന മറ്റു സമുദായാംഗങ്ങൾക്കും ബോധപ്പെട്ടിട്ടുള്ളതാണ്. എനിക്ക് അധികപരിചയമുള്ള വടക്കൻ തിരുവിതാംകൂറിലെ സ്ഥിതിയെപ്പറ്റി പറയുന്നപക്ഷം, അവിടെ മിക്ക നായർ കുടുംബങ്ങളിലും കുടുംബാംഗങ്ങളം തമ്മിൽ ഛിദ്രവും, കുടുംബകാര്യങ്ങളം ശരിയായി അന്വേഷിച്ചു നടത്തുന്നതിന് ആളില്ലാത്തതിനാൽ ധനനാശവും നേരിട്ടു കൊണ്ടിരിക്കുന്നതായി കാണാം. കുഞ്ഞുങ്ങളെ വിദ്യാഭ്യാസം ചെയ്യിക്കുന്നതിനും, പ്രായമാകുന്നതോടുകൂടി അവരെ ഓരോ തൊഴിലുകളിൽ പരിശീലിപ്പിക്കുന്നതിനും, പ്രത്യേക ചുമതലയുള്ള ആളം ഇല്ലാതെയിരിക്കുന്നു. ഇതെല്ലാം അച്ഛൻ ചെയ്യട്ടെയെന്നു കാരണവനും, കാരണവൻ ചെയ്യട്ടെയെന്ന് അച്ഛനും വിചാരിച്ചു വിട്ടു കളയുന്നു. കാരണവൻ കുടുംബത്തെ സംരക്ഷിക്കുന്നതിനു സന്നദ്ധതയോടെ പ്രവർത്തിച്ചുവന്നാലും ഭാര്യയുടേയും കുഞ്ഞുങ്ങളുടേയും കാര്യത്തിലാണ് അധികം ശ്രദ്ധിക്കുന്നതെന്നു കുടുംബത്തിലുള്ളവർ പലപ്പോഴും സംശയിച്ചുകൊണ്ടേയിരിക്കും. ഭാര്യയുടേയും കുഞ്ഞുങ്ങളുടേയും കാര്യങ്ങളിൽതന്നെ ശ്രദ്ധിച്ചുകൊണ്ടിരിക്കുന്നതായാലും അവരും അയാൾക്കു കുടും

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ബകായ്ങ്ങളിലാണു കൂടുതൽ താൽപര്യമെന്നു സംശയിക്കുതന്നെചെയ്യും. ഈ വിധം രണ്ടിടത്തു നിന്നും സംശയവും വിശ്വാസക്കുറവും ഹേരിട്ടുകൊണ്ടിരിക്കെ, ഒരു നായർ കുടുംബത്തിലെ കാരണവർക്കു സമാധാനത്തോടെ ജീവിതം നയിക്കുവാൻ പലപ്പോഴും പ്രയാസമായിത്തീരുകയും വാർദ്ധക്യമോ രോഗമോ നിമിത്തം തങ്ങളുടെ അടുത്ത ആളുകളുടെ സഹായത്തിനും ശുശ്രൂഷയ്ക്കും ആവശ്യപ്പെടുമ്പോൾ രണ്ടാഭാഗത്തു നിന്നും വേണ്ടപോലെ സ്നേഹപൂർവ്വമായ പരിചരണാദികൾ ലഭിക്കാതെ വരികയും ചെയ്യുന്നു. കുടുംബത്തിലെ ഇളമുറക്കാരുടേയും സ്ത്രീകളുടേയും സ്ഥിതിയും ഒട്ടുംതന്നെ സമാധാനത്തിലോ സുഖത്തിലോ ആയിരിക്കുന്നില്ല. കാരണവർ കുടുംബത്തെ നശിപ്പിക്കുന്നു എന്നും കുടുംബകാര്യങ്ങൾ വേണ്ടവണ്ണം അനേഷിക്കുന്നില്ലെന്നും കുടുംബാംഗങ്ങൾക്കു വേണ്ടതു കൊടുത്തു സംരക്ഷിക്കുന്നില്ലെന്നും അനന്തരവരും, അനന്തരവർ കാരണവരുടെ അജ്ഞാനസരണം കുടുംബകാര്യങ്ങൾ നോക്കുന്നില്ലെന്നും കാരണവന്മാരായി വഴക്കിട്ടുകൊണ്ടിരിക്കുന്നുവെന്നും കാരണവരും, പരസ്പരം ദോഷാരോപണങ്ങൾ ചെയ്തുകൊണ്ടിരിക്കുന്നതു സാധാരണ നടപ്പത്രെ. ഈ വിധമുള്ള കുടുംബത്തിൽ കഴിഞ്ഞുകൂടുന്നതിനു സ്ത്രീകൾക്കും വളരെ ബുദ്ധിമുട്ടുകൾ സഹിക്കേണ്ടിയിരിക്കുന്നു. അവരുടെ കായ്ങ്ങളും മിക്കവാറും ഭർത്താവുനോക്കട്ടേയെന്നു് അമ്മാവനും, അമ്മാവൻനോക്കട്ടേയെന്നു ഭർത്താവും പരസ്പരം വിചാരിച്ചുകളയുന്നു. ഇതിൽനിന്നെല്ലാം കുടുംബത്തിൽ വലിയ കലഹങ്ങൾക്കും ഉൎവ്യവഹാരങ്ങൾക്കും നിമിത്തം കുടുംബക്ഷയത്തിനും ഇടവരുന്നു. അവകാശക്രമനിയമം ഭേദപ്പെടുത്തിയാൽ ഇതിനെല്ലാം പരിഹാരമുണ്ടാകുമെന്നു ഭൂരിപക്ഷാംഗങ്ങൾക്കും അഭിപ്രായമുണ്ടെങ്കിലും, തൽക്കാലം താഴ്ത്തിഭാഗം അനുവദിക്കുന്നതായിരുന്നാൽ മതിയെന്നു ചിലരും അതുപോരാ ആളോഹരിഭാഗം തന്നെ വേണമെന്നു മറ്റു ചിലരും അഭിപ്രായപ്പെട്ടുകൊണ്ടിരിക്കുന്നു. എന്റെ അഭിപ്രായം പുതിയ അവകാശക്രമനിയമം ഇപ്പോഴത്തെ സമുദായത്തിലെ ദോഷങ്ങൾക്കു പരിഹാരം വരുത്തത്തക്കതായിരിക്കണമെങ്കിൽ, ആളോഹരിഭാഗവും പൂർണ്ണമക്കത്തായവും അനുവദിക്കുന്നതും, ഒരു സ്ത്രീക്കു ഒരു ഭർത്താവേ പാടുള്ളു എന്നതുപോലെ ഒരു പുരുഷന് ഒരു ഭാര്യയേ പാടുള്ളുവെന്നും, വിവാഹബന്ധം സ്ത്രീക്കും പുരുഷനും വേർപെടുത്തുവാൻ പാടില്ലെന്നും വ്യവസ്ഥപ്പെടുത്തുന്നതുമായിരിക്കണം. കുഞ്ഞുങ്ങൾക്കു തങ്ങളുടെ പിതാവും ഭാര്യയ്ക്കു ഭർത്താവും രക്ഷിതാവായിരിക്കേണ്ടതിനാൽ ഒരു പുരുഷന്റെ സ്വത്തുക്കളുടെ അവകാശി മക്കളും ഭാര്യയുമാണ

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[Mr. A. Hoogewerf.]

ന്ന വ്യവസ്ഥപ്പെടുത്തണം. മനുഷ്യജാതിയിലെ മഹാഭ്രൂരിപക്ഷവും പക്ഷിമൃഗാദികളും സഹോദരകളേയും മതുമക്കളേയുമല്ല, ഭാര്യയേയും കുഞ്ഞുങ്ങളേയുമാണ് സംരക്ഷിച്ചുവരുന്നത്. ഇതാണ് പ്രകൃതിയിൽ സർവ്വത്ര കാണുന്നത്. സ്വാഭാവികമല്ലാത്ത ആചാരങ്ങൾ ഏതു സമുദായത്തിനും നാശകാരണമായേതീരു. അനേ.സമുദായത്തിൽപെട്ട പുരുഷൻ നായർസ്ത്രീയെ വിവാഹം ചെയ്യുന്നതായാലും അതിൽ നിന്നുണ്ടാകുന്ന സന്താനങ്ങൾക്കും ഭാര്യയ്ക്കും സ്വത്തവകാശം നൽകണമെന്നു തന്നെ നിയമം വയ്ക്കുണ്ടതാണ്. അതുകൊണ്ടു മറു സമുദായങ്ങൾക്കു ദോഷമൊന്നും വരാനില്ല. എന്തെന്നാൽ, നായർസ്ത്രീയെ വിവാഹം ചെയ്തുകൊള്ളണമെന്ന് ഇതരസമുദായത്തിൽപെട്ട ആരേയും നിയമം നിർബന്ധിക്കുന്നില്ല. ഈ നിയമം ഒരു കുരുക്കാണെന്നു കരുതുന്നവർക്കു അതിൽ നിന്നും ഒഴിഞ്ഞുനിന്നുകൊള്ളുവാനുള്ള പൂർണ്ണസ്വാതന്ത്ര്യം ഉണ്ടല്ലോ. തൽക്കാലം താഴ്ന്നഭാഗം മതിയെന്നും ഒന്നായിട്ട് ആരോഹരിഭാഗം അനുവദിക്കുന്നതു നന്നല്ലെന്നും ചിലർ അഭിപ്രായപ്പെടുന്നുണ്ട്. ഇപ്പോഴത്തെ രോഗത്തിന് ഒന്നായിട്ട് ഒരു ശസ്ത്രക്രിയ ചെയ്യാതെ പൂർണ്ണസുഖം കിട്ടുന്നതല്ലെങ്കിൽ പലപ്പോഴായി കുറേശ്ശ ആകാമെന്നുവച്ചു സമുദായശരീരത്തെ എന്നും രോഗസ്ഥിതിയിൽതന്നെയിട്ടിരിക്കുന്നതു ശരിയല്ല. പുതിയായ ഒരു നിയമത്തിന്റെ ഫലങ്ങൾ സമുദായത്തിൽ ഒട്ടുക്കു വ്യാപിക്കണമെങ്കിൽ കുറെ വർഷങ്ങൾ വേണ്ടിവരും. അപ്പോഴെക്കും വീണ്ടും ഭേദപ്പെടുത്തി നിയമത്തെ കൂടക്കൂടെ അസ്ഥിരമാക്കികൊണ്ടിരിക്കുന്നതു നന്നല്ല. അതിനാൽ ഇപ്പോൾ ആവശ്യമെന്നു കാണുന്ന ഭേദഗതികളെല്ലാം ഒന്നായി വരുത്തികൊള്ളുകയാണു ഞാൻ.

MR. A. HOOGEWERF: Sir, I was not present yesterday and the day before during the discussion on this very important bill. I think I will be failing in my duty if I do not say something in appreciation of the legislative measure brought forward by Mr. Raman Pillai. Last week, in spite of the petitions and everything else, we stood round the grave of *misradayam* and sounded the funeral dirge to it. Our conclusions have brought joy and hope into many Ezhava families. It is a sign of the times that people are beginning to recognise that there is something wrong in the state of the married life, and, therefore, the Ezhava Bill and the Nair Bill provide for monogamy. Monogamy is the keynote of the two bills. But, as Mr. Subba Aiyar rightly observed, to make the marriage law consistent, the marriage tie must be made as indissoluble as possible. Divorce must not be resorted to except under exceptional circumstances. In the bill, monogamy is provided for; but

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the dissolution of the marriage-tie is made as easy as possible. I think this is a contradiction. Marriage is a sacred tie and not merely a contractual tie. When the wife finds her real place in the home as the queen, and the sons and daughters as the princes and princesses, it is only then that the real aspect of marriage can be recognised. Only then can individual partition, *makkathayam* and monogamy be appreciated. There will always be struggle for *marumakkathayam* and other things as long as the sacredness of the marriage-tie is not recognised. I congratulate the member who has brought forward this bill, and I would request him to keep before his mind that indissolubility is the goal, that we must keep pace with the times, and that we should recognise that our sons and daughters have a right over our property. With these few remarks, I support the general principles of Mr. Raman Pillai's bill.

MR. T. M. CHIDAMBARATANU PILLAI: நானும் மருமக்கள்வழியாரைச் சேர்ந்தவனுதலால், அந்த ஜாதிக்காரருக்குள்ள சில கஷ்டங்களை எடுத்துக் காட்டவேண்டியது என் கடமையாகும். நான் மிஸ்டர் கெ. பி. ராமன் பிள்ளையுடைய பில்லைப் பூர்ணமாய்ப் பின்தாங்குகிறேன்.

பாகமுறை.

1. மருமக்கள்வழி சமுதாயத்தில் சட்டப்பிரகாரம் பாகத்துக்கு இடமில்லாவிட்டாலும் சம்மதப்பிரகாரம் பாகஞ்செய்து வருகிறவழக்கம் நடந்தே வருகிறது; அதாவது பாகக்கிரமம் அவரவர் சௌகரியம் போலே தாய்வழியாகவும் தலைவழியாகவும் செய்து வருகிறார்கள்.

2. தலைவழி அல்லது ஆள்வீதம் பாகமே நன்மைதரக்கூடியது. முதலாவதாக, பாகம்வேண்டுமென்று இப்போது கேட்பதின் நோக்கங்களாவன:—

(i) காரணவரின் கொடுங்கோல் அரசாட்சியிலிருந்து தப்புவித்துக்கொண்டு ஒவ்வொருவரும் சுதந்தரம் அடைதல்; (ii) தம்மிடத்தில் அன்புபூண்டொழுகும் மனைவிமக்களுக்குத் தனக்குபின் தனது சொத்து இறங்குதல். மேற்கூறிய இரண்டு நோக்கங்களை நிறைவேற்றவினைக்குங்கால் ஆள்வீதம் பாகமே இன்றியமையாதது. தாய்வழியாகப் பிரிக்கிற காலத்தில் காரணவர்கள் செய்கிற தீங்குகளுக்கு அஞ்சுகிற குடும்பத்தைப் பல காரணவர்கள் வகையில் ஒப்பிடக்கலாகும். காரணவஸ்தானம் நீங்காத பாகம் பாகமே அன்று. அதிலில் பயனுமில்லை. இந்தக் கிரமப்படி அடையும் பாகத்தால் மருமக்கள்வழிசமுதாயம் தீமையே யடையுமன்றி அணுவளவேனும் நன்மை அடையமாட்டாது.

3. இனி தாய்வழியாகப் பிரித்து ஒவ்வொரு தாய்வழி அங்கத்தினர்களுக்கும் இந்த முறைப்படிப் பிரித்து விட்டாலோ என்றுகேட்டால் அதுவும் கெட்ட முறையாகும். மருமக்கள் வழிச் சொத்துத்தரபட்டில் ஒவ்வொரு அங்கத்தினருக்கும் சம உரிமை உடையது. ஒரு காரணவருக்கும் அகன்ற கூற்றிலிருக்கும் ஒவ்வொரு கடை அங்கத்தினருக்கும் சொத்துரிமை ஒரு காலத்திலும் வித்தியாசம் கிடை

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[Mr. T. M. Chidambaratanu Pillai.]

யாது. மூப்பு என்ற ஒரேகாரணம் பற்றி அவர்கள் குடும்பகாரணவர் களாகி, அதினபலனுக்குக் குடும்பச் சொத்துக்களை அனுபவிக்கிறார்களே யன்றி வேறில்லை. மருமக்கள்வழி சொத்துக்களுக்கெல்லாம் உண்மை யான உடைமைக்காரர்கள் ஸ்திரீகளேயாவர். அவர்களுடைய உரி மைகளைப் பாதுகாப்பது புருஷர்கள் ஒவ்வொருவருடையவும் கடமை. புருஷர்களிடம் ஸ்திரீகளுக்குப் பங்கு கூடியிராவிட்டாலும் குறையா மலேனும் காப்பது நமது பொறுப்பன்றே? ஒரு பங்கை எடுத்துப் பலபங்குகளாகப் பிரித்துக் கொடுக்கும் நிர்ப்பந்தம் ஸ்திரீகளுக்கே எற்படுமேயன்றி புருஷர்களுக்கு ஏற்படமாட்டாது. இந்த முறைப் படி பாகித்தால் புருஷனின் ஒருபங்கை எடுக்க ஸ்திரீ அவள் குழந்தைக ளின் எண்ணத்திற்கு ஏற்றபடி புருஷன் பங்கில், ஐந்தில் ஒன்றோ, ப த்தில் ஒன்றோதான் பெற இடமாகும். உதாரணமாக, ஒரு குடும்ப த்தில் இரண்டு சகோதரர்களும், இரண்டு சகோதரிகளும் இருக்கிறார் கள். சகோதரிகளில் ஒருத்திக்கு இரண்டு குழந்தைகளும் ஒருத்தி க்கு நாலு குழந்தைகளும் இருக்கின்றன. தாய்வழியாகப் பிரித்து ஆள் விதம் பிரித்தால் இரண்டு சகோதரர்களுக்கும் $\frac{1}{4}$—பங்கு விதமும் சகோத ரிகளில் ஒருத்திக்கு $\frac{1}{4} \times \frac{1}{3} = \frac{1}{12}$ பங்கும், ஒருத்திக்கு $\frac{1}{4} \times \frac{1}{5} = \frac{1}{20}$ பங்கும் கிடைக்கும். ஆகவே ஒரு குடும்பத்தில் எல்லா அங்கத்தினருக்கும் உரி மைவாய்ந்த சொத்து பகுபாதத்தோடு அங்கத்தினருக்கு வற்புற வுடன் பகுக்கப்படுகின்றது. புருஷர்களுக்கே பெரு தொகையை யும் ஸ்திரீகளுக்குச் சிறுபகுதியும் கிடைக்கும். இது நியாயத்திற்கும் யுக்திக்கும் சற்றேனும் பொருத்தமுடையதன்று. பாகம் பிரிந்த புரு ஷனுடைய சொத்து அவன் மனைவிமக்களைச் சேரவேண்டுமென்பது எ ல்லோருடையவும் கொள்கை. இம்முறைப்படி பாகித்தால் சொந்த சம்பாத்தியத்துக்கு உரிமைவாய்ந்த அன்னிய குடும்பத்தைச்சேர்ந்த மனைவி மக்கள் கூடுதல் சொத்தைப் பெறவும், சொத்து முழுமைக்கும் உரியையுடைய குடும்பத்தைச் சேர்ந்த ஒரு பெண் மிகக்குறைந்த ஒரு அம்சத்தைப் பெற எதுவாகின்றது. இது நியாயமான முறை என்று ஒருவரும் சொல்லத் துணியார்.

தலைவழிப் பாகம் (ஆள்விதம்).

4. இந்த முறைப்படி பாகிப்பதே ஏற்றதாகும். ஒரு குடும்ப த்தைச் சேர்ந்த ஒவ்வொரு அங்கத்தினருக்கும் குடும்பச் சொத்தில் சம உரிமை உண்டு என்பது யாவராலும் மறுக்கப்படக்கூடிய காரிய மன்று. உண்மையை ஆதாரமாகக் கொண்ட சோர்ட்டாரும் குடும்ப த்தின் ஒவ்வொரு அங்கத்தினருக்கும் காரணவர் செலவுக்குக் கொடு க்கவேண்டுமென்று விளம்பியிருக்கிறார்கள். ஆகையால் பகுபாதமின் றிக் கூடுவோமானால் குடும்பத்திலுள்ள ஒவ்வொரு அங்கத்தினரை யும் எண்ணிக்கணக்கிட்டுக் குடும்பச் சொத்தைப் பங்கிட்டுக் கொடு ப்பதே ஏற்ற முறையாகும். மருமக்கள் வழி குடும்பத்திற்குப் பலவி தத்திலும் கேடு விளைவித்து வருகிற காரணவஸ்தானம் நம்மைவிட்டு அகலும். நமது ஸ்திரீபுருஷர்களும் சுதந்திரமடைந்து மகிழ்வார்கள். கல் இழுத்த உரம் இழுத்து கிடக்கும் நிலம் புறவிடக்களும் கன்னிலை மைக்கு வரும்.

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5. வியாபாரத்துறையில் காப்பிக் கடைபரிசுத்தம் சென்று கற்கும் வாலிபர்களும் பொறுப்புவகிகளில் தலையிட்டு உலகில் சிறப்புற்று ஓங்குவார்கள்.

6. பிறவர்கள் கையில் சொத்தைச் சுதந்திரமாகக் கொடுத்தால் அவர்கள் பொருளை நாசம் செய்வதும் அன்றி, கெட்ட பழக்கங்களில் ஏற்பட்டு அதன் பயனுக்கு சமுதாயம் நாகரீகத்திலும் பொருள் வகைமையிலும் குன்றி, தன் மதிப்பையிழக்க இடம் வருமென்று ஒரு சாரார் வாதிப்பதுண்டு. அது முற்றிலும் தவறு. இவ்வளவு நிபந்தனைகளுக்குக் கல்வி கற்பித்தால் அவர்கள் கற்புக்குணமும் இடமாகுமென்று நாம் எண்ணுவதற்கு ஏற்பாகும்.

7. சொத்துக்களைப் பலவாறுகப் பிரித்தால் சமுதாயத்தில் செல்வவான்களின் தொகை குறைந்துவிடுமென்று நினைக்கலாம். பாகத்திற்கு உரிமையாய்ந்த மக்கள்தானே தகப்பனுடைய பணத்தை செலவு வைக்கலாம்? அல்லது உரிமையாய்ந்த சொத்துக்களை ஒருவனையில் வைத்துக்கொண்டு உள் அழுகிய பூசணிக்காய்போல் உலகத்தை ஏமாற்றும் இந்த மருமக்கள்தாயங்கள் செல்வவான்களா?

8. மேலும் மருமக்கள் தாயச் சிறுவர்கள் கல்வி விஷயத்தில் முன்னேறுதிருப்பதற்கும் இந்த மருமக்கள்தாயமுறையே காரணமாகும். உதாரணமாக, ஒரு குடும்பத்திற்கு 20-ஏக்கர் நிலம் உண்டு. அந்தச் சொத்துக்கு உரிமையாய்ந்தவர்களாக 40 பேர்களும் உளர். இந்த 40 பேர்களுக்குள் ஒவ்வொருவரும் தனக்கு 20 கோட்டை நிலமிருக்கிறது என்பதாக நினைக்கிறார்கள். இந்த எண்ணத்தின் பயனுகத் தானும் இருமாப்பிலும் வருத்தி கல்வியிலவேண்டுமென்னும் தூண்டுதல் அறவே ஒழிந்து பிரயோஜனமின்றி எளனமானபொருளைச் செலவுசெய்து விட்டுக்கு நிந்திப்பிக்கிறுன். உண்மையில் அவன் அனைக்கோட்டை விஸ்தீரணத்துக்குத்தான் உரிமையுடையவன். 20-கோட்டை விஸ்தீரணம் இருக்கிறதாக நினைப்பதுதான் அவர்கள் கெட்டுப்போவதற்குக் காரணம்.

9. தனிரவும் வர்த்தகர், கைத்தொழில் முதலாளி முயற்சிகள் செல்வத்திற்குப் பஞ்சமில்லாமல் நிலைத்திருக்கிறார்கள். மருமக்கள் வழிக்காரன் பணம் கடன்கேட்டாலும் ஒருவரும் கொடுக்கத்தயாராயில்லை. ஆதலால் ஆஸ்திதப்பாகமும் மக்கள்தாயமுமே சமுதாய நன்மைக்கு ஏற்றது.

Mr. K. P. RAMAN PILLAI: Sir, I have very little to add to what has already been said by my friends who advocated *makkathayam* and individual partition as the only solution to remove the impediments that stand in the way of the progress of the Nair community. My friend, Mr. P. K. Narayana Pillai, in his own inimitable way, with a scholarship, capacity and learning all his own, has given almost crushing replies to the various arguments from persons who spoke about the consequences of certain provisions of my bill. I have only to thank him and all my friends who have come forward with very many helpful suggestions both of a constructive and destructive nature.

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[Mr. K. P. Raman Pillai.]

I should, at the outset, answer a personal charge levelled against me by Mr. G. Paramesvaran Pillai, that my bill shows signs of hasty draftsmanship. If my friend used that expression in the sense that I drafted the bill hastily, I plead guilty. But if he meant that I was thoughtless or hasty in including the various provisions in the bill, I must certainly demur to that.

MR. G. PARAMESVARAN PILLAI: No, no.

MR. K. P. RAMAN PILLAI: I did not take much time to draft the bill because the wishes of the people had been practically codified by the Nair reformers' leagues in many important places and on several occasions.

MR. G. PARAMESVARAN PILLAI: I might at once say that my remarks relate to the wording of certain provisions.

MR. K. P. RAMAN PILLAI: Even if one had taken a year over the drafting of the bill, one could not have produced a less controversial one, for, in a piece of social legislation, one man's meat often turns out to be another man's poison.

There has been a controversy about monogamy. It will be a matter of no great concern to me how the Council is going to dispose of this question. However, I cannot agree with Mr. Velu Pillai when he says that Sri Rama stood for polygamy. At any rate, he did not set his face against monogamy. I find from certain passages that follow the lines quoted in the *Marumakkathayam* Committee's report—they have not quoted the entire passage—that he was against polygamy.

As regards the plurality of wives allowed in section 10 (*b*) to non-Nairs who contract marriages with Nairs, I have been accused of transgressing well-known canons of legislation and of making myself inconsistent. Well, if I had not made that provision, there would still have been a hue and cry that I had transgressed the rights of gentlemen whose personal law recognised polygamy, and that the majority are tyrannising over the minority, and so forth. My bill concerned only with marriage, succession, etc., among the Nairs. In doing so, I was obliged to make some provision for non-Nairs whose marriage with Nair women has been legalised by Regulation I of 1088. The bill contemplates that a non-Nair, having a personal law of his own allowing polygamy, shall not have more than one Nair wife at a time. In making that provision, I had the case of the Nambudiri and Kshatriya castes in mind. I know that some of these persons considered variety as the spice of life, and that many a Nair woman had to suffer for it. Therefore, I still think that Mr. Rangaswami Aiyangar was taking up an inconsistent position when he said that, under section 10 (*b*), I was committing a breach of the canons of legislation.

I do not agree with Mr. G. Paramesvaran Pillai in that the difficulty of having to provide for unmarried daughters of the caste-wife need stand in the way.

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Then, again, Mr. Vasudevar told the Council that I did not make the definition of Nair sufficiently comprehensive, so as to include within its scope a few more classes. I do not know under what authority he said that. I was going through the Cochin Committee's report and the *Marumakkathayam* Committee's report. I find, from my experience of the custom in my community, that only those whom I have enumerated are recognised in the community as Nairs. I do not think Mr. Vasudevar would consent to contract a marriage with a female of the *Vilakkatalava* caste. Even if he is ready to do that, I shall not include *Vilakkatalavan* in the definition.

Mr. Rangaswami Aiyangar objected to clause 30 being retrospective in effect. In making that provision, no breach of legislative canons could be said to have been made. I believe he knows that the legislature is competent to enact retrospective measures. The same provision was inserted in the Nair Regulation for the purpose of validating several marriages, which would otherwise have remained invalid in the eye of the law.

In regard to clause 31, I am not prepared to believe that there is any delegation of legislative function to the Government. The law will be made cut and dry in this House, and all that the Government will have to do is to ascertain the wishes of particular communities and to decide whether this particular piece of legislation should be extended to them or not.

Clause 13 (B) has occasioned a good deal of learned and exciting discussion. If the mentality of the representatives in this House of the non-Nair communities who contract marriages with Nair females, is to be taken as an index of the feelings of those communities, I would say unhesitatingly that the sooner these alliances are discontinued the better it would be for the self-respect of the Nair community and the honor of its women. It is due to this kind of *mèsalliance* that the women of these non-Nair castes have to pine away in holy zenanas. The position of the Kerala Brahmins and the Kshatriyas appears to be somewhat like this. They say that they did not seek the marriage. They consider it as a matter of condescension on their part. The Brahmins say that it is not a *sastraic* marriage. With regard to these gentlemen who take their stand on the *sastras*—I am rather ignorant of *sastras* myself, but there is Mr. K. P. Padmanabha Menon's memorandum in which some of the *sastraic* verses are translated—I find that these *sastraic* Brahmins cease to be Brahmins from the moment they contract a marriage with Nair females. He has the authority of Manu; Manu is supported by Atri and Gautama. They say that "the twice-born who marries a Sudra female lowers himself to the rank of a Sudra." According to the *sastras*, therefore, they have lost caste, so that they ought not to have any objection to make provision for their Nair wives and children as contemplated in the bill. Of course, Mr. Narayana Pillai has made the point very clear as to who generally seeks these marriages. I do not wish, at this late hour, to detain the House by entering into a discussion on a matter which has been well threshed

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[Mr. K. P. Raman Pillai.]

out. But I must tell my Kshatriya and Malayala Brahmin friends, especially Nambudiries and Tampurans, to try and marry in their own castes. Their marriage with Nairs is no longer looked upon as a favour, and the prohibition of such marriages is likely to entail more hardship upon them than on the Nairs. The prohibition is bound to affect the Kshatraiyas who do not get girls for marriage in their own community, and who would consequently be driven to the necessity of enforced celibacy or breach of some provision or other of the Penal Code. It is too late for them to demur to this provision and it is better that they allow this section to be enacted.

Regarding the followers of the *Mitakshara* law, Mr. Krishna Aiyangar has delivered, as I anticipated, a carefully reasoned speech, moderate in tone and almost oratorical in effect. I believe the Select Committee will have to give considerable attention to the constructive suggestions he has made in regard to the devolution of property when there are children by the Nair wife as well as by the caste-wife, after making allowance for the funeral expenses of the intestate.

To my mind, all these questions are comparatively trivial; the most important provision, in fact the corner-stone, of my bill, is individual partition. So far as Nairs are concerned, they must get something for their bread to satisfy their hunger, and then it would be time enough for them to think of polygamy or monogamy. Mr. Subba Aiyar was basing some of his arguments on the report of the *Marumakkathayam* Committee. May I point out that they themselves admit that all the arguments they applied in favour of *thavazhee* partition are more applicable to individual partition, and the ideal, the consummation to be reached, is according to that committee, individual partition? The only question Government have to consider is whether the time has come for the recognition of the individual's share in the *tarwad* property. I am very glad that all my Nair friends are unanimous in supporting the principle of individual partition.

MR. V. SUBBA AIYAR: I do not think that *all* have subscribed to individual partition.

PRESIDENT: It is correct, unless any one contradicts that statement.

MR. K. P. RAMAN PILLAI: I was led to infer that they all agreed to the principle of individual partition with this reservation that proper safeguards ought to be made so that there may not be any sudden disintegration of all the properties owned by the community.

MR. T. K. VELU PILLAI: I must tell Mr. Raman Pillai that this was the sense in which I for one supported him.

MR. K. P. RAMAN PILLAI: That is exactly the principle. I am not surprised that some difficulty was felt by some of my friends to understand the exact principle which I wish them to affirm. I may tell them straightway that the principle of my bill is not *thavazhee* partition. The kind of individual partition that I wish them to agree to is

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that of the right of any member of a *tarwad* to demand his share, and to dispose of it through the natural process of devolution, which would be conductive to the prosperity of the community and which would not have the effect of revolutionising it. Even permissive legislation would be enough. In the light of this explanation, no one would hereafter find any difficulty in affirming the principles of the bill. Certain objections have been incidentally pointed out which the Select Committee will have to consider in making provision for individual partition. Dr. Kunjan Pillai's objection was based on principles of economics. Mr. Padmanabha Pillai also referred to that aspect and said that the Nair has not the habit of industry. All that I can say is that it is not the fault of the Nair, but it is the fault of the system of inheritance. Once you cut him adrift, he would hold his own against the members of any other community. I would refer Mr. Padmanabha Pillai to the number of Nair youths who have gone to far-away places. Many of these young men are doing splendidly well outside. In fact, many do-nothings who have been a terror to their schoolmasters and a perpetual source of nuisance to their guardians are doing remarkably well outside. That does not show that the Nairs are an idle race. But their system of inheritance is such that it is bound to breed idle habits.

There was another difficulty raised about the *tarwad* house. That is a real difficulty, but it is bound to exist until all the *tarwads* go to decay. Mr. Padmanabha Pillai wants to have individual partition delayed till after all these houses have fallen to the ground. I fear I cannot agree with him there. Another argument was with regard to the insufficiency of houses. I submit that it will not be possible for the Nair community to put up a sufficient number of houses for the accommodation of its members before they ask for individual partition. A further objection raised was that the women were unfit to look after themselves. I strongly repudiate it. If the Nair woman, brought up in a matriarchal system, is unable to look after herself, I think no other women will be able to do it. Besides, as Mr. Narayana Pillai pointed out, if you cast your eyes on the Main Road, you will see how the Nair woman is helping herself. The fact that the Nair wife is capable of arousing in the mind of her non-Nair husband a desire to give practical expression to his sense of moral obligation to maintain her and her children ought to serve as a sufficient guarantee for her fitness in life. Clause 26 of my bill was almost a test of the sincerity of the professions of my friends who advocate individual partition. We have been holding monster meetings, passing resolutions and agitating in the press and on the platform for individual partition. Serious accusations have been levelled against Mr. C. Raman Tampi for providing *thavazhee* partition in his bill. Now that individual partition has been provided for with all its concomitant results, some of its advocates seem to exhibit signs of indecision, which would remind one of the *puranic* story of the son of Virata. I submit that all these objections are sentimental and result out of indecision.

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[President.]

One word about Dr. Kunjan Pillai, and I am done. He is one who is considered by the Nair community as one of its greatest supports. But for our personal relations, I would have said he is one of the gems of our community. At the time Mr. Raman Tampi introduced his bill, the President allowed official members freedom of conscience. This is what the President said:

"In the case of a piece of social legislation like the one before the Council, Government would not impose any restriction on their officers, especially the Nair officers, who may take an interest in it. The official members may, therefore, express their opinion on the bill, if they like."

And the first officer who jumped up to take advantage of the opportunity and denounce Mr. Tampi's bill for providing *thavazhee* partition was Dr. Kunjan Pillai. He said:

"Mr. Tampi has no doubt made provision in his bill for the partition of *tarwad* properties among *thavashees*. But this will only aggravate the anticipated evil."

Dr. Kunjan Pillai, as a sort of compromise, then said:

"My suggestion is that those who could be allowed to free themselves from the fetters of the mixed system without detriment to the interests of others should be given a chance to do so, and I would therefore say that, if, at the time of marriage of a male or female, both the husband and wife agreed to constitute a *makkathayam* family, they must have the right to claim their share of their respective *tarwad* properties."

The somersault now made by Dr. Kunjan Pillai has made me really sorry—

DR. N. KUNJAN PILLAI: A word of personal explanation.

PRESIDENT: Mr. Raman Pillai has not yet said what the somersault is. You may explain after he has mentioned it.

MR. K. P. RAMAN PILLAI: Dr. Kunjan Pillai then suggested *makkathayam* and individual partition as a compromise. Now that individual partition and *makkathayam* have been provided for, he suggests *thavazhee* partition as a compromise. I am, therefore, led to the irresistible inference that Dr. Kunjan Pillai would not have said as he did, had the President given official members the permission which was given to them at the time Mr. Tampi's bill was introduced. Before I sent up my bill, I had consulted Dr. Kunjan Pillai who told me that representations from so many as twenty-eight centres had reached him advocating individual partition and *makkathayam*.

PRESIDENT: I do not catch what you say.

MR. K. P. RAMAN PILLAI: That is to say, the President may give permission to the official members to express their opinion as they please.

PRESIDENT: That is a matter between the Government and their officers.

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MR. K. P. RAMAN PILLAI: Whatever that be, all that I wish to point out is—and as my friend Mr. Narayana Pillai pointed out—that it is time for the Government to interfere and recognise this demand for individual partition and *makkathayam* without asking us to go and take evidence either at the time of the Select Committee or at any other stage. I would also request Government that they should leave their officers free to vote on the provisions of the bill according to their conscience.

DR. N. KUNJAN PILLAI: Sir, I wish to offer a word of personal explanation. I think my friend Mr. Raman Pillai is under a misconception about the position I have taken now and the position which I took at the time when Mr C. Raman Tampi introduced his Nair Regulation Amendment Bill into the late Legislative Council. I have all along been, and am still, in favour of individual partition. I declared so openly in this very Council when I spoke on Mr. Raman Pillai's bill, and all the arguments I adduced were in support of individual partition. Mr. Tampi's bill contained provision for *thavazhee* partition only; and, while speaking on that bill, I said that I was an ardent believer in individual partition and that Mr. Tampi should have made some provision for it in his bill. With these remarks, I supported the general principle of the bill in the hope that, at the Select Committee stage, it would be possible to make provision in the bill for at least some form of permissive individual partition. There existed then, as there exists now, a volume of opinion *against* individual partition, and I supported the principle of *thavazhee* partition out of deference to the wishes of the minority or the majority, whatever that might be, who opposed individual partition. Mr. Raman Pillai's bill contains provision for individual partition only. Even now, a portion of the Nair community is opposed to individual partition. It might be a negligible or a respectable minority. But, if, on account of their opposition, individual partition is not going to be granted, and if the whole question of partition is likely to fall through because individual partition cannot be had, I thought that would be the greatest misfortune that could befall the community. My only contention is that, if we cannot get individual partition, let us have at least *thavazhee* partition of the type that is provided for in the Ezhava Bill. This form of *thavazhee* partition will lead to individual partition in the course of some years, and it is, therefore, better than having no partition at all. I hope I have made my position clear. Personally, I do not see how I could be accused of being inconsistent or of having made a somersault in my opinion.

PRESIDENT: The motion before the House is that the principle of the Nair Regulation Amendment Bill be accepted by the Council.

The motion was carried.

The Secretary then read the title of the bill.

MR. K. P. RAMAN PILLAI: May I be allowed to mention the names of the Members of the Select Committee after lunch?

PRESIDENT: Yes. We will now rise and meet again at a quarter past three.

The House adjourned for lunch at 2-28 P. M.

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[President.]

The Council re-assembled at 3-25 P. M.

MR. K. P. RAMAN PILLAI: Sir, I move that the Nair Regulation Amendment Bill be referred to a Select Committee consisting of the following members :—

1. Mr. A. Govinda Menon.
2. Dr. N. Kunjan Pillai.
3. Mr. T. Kumara Pillai.
4. ,, C. P. Kochukunju Pillai.
5. ,, P. K. Narayana Pillai.
6. ,, K. Paramesvaran Pillai.
7. ,, G. Paramesvaran Pillai.
8. ,, N. Padmanabha Pillai.
9. ,, N. Ramakrishna Pillai.
10. ,, T. K. Velu Pillai.
11. ,, K. A. Krishna Aiyangar.
12. ,, K. C. Raja Raja Varma.
13. ,, Trivikramar Vasudevar.
14. ,, M. Udaya Varma Raja.
15. ,, V. Subba Aiyar.
16. The Member in charge of the Department.
17. ,, Mover.

MR J. JOHN NIDIRY: I second it.

PRESIDENT: Does the House accept the motion?

The motion was put to the vote and carried.

PRESIDENT: It is not necessary to specify the period.

MR. V. SUBBA AIYAR: The period may be specified.

PRESIDENT: The period need not be fixed. The Select Committee naturally may take some time to submit its report.

MR. P. K. NARAYANA PILLAI: Sir, the time also has to be specified.

PRESIDENT: The Manual says that "the Council may direct that its report shall be submitted within a specified period" and so it does not seem to be necessary to specify any period in cases like this.

Now we will go on with the resolutions.

MR. V. SUBBA AIYAR: It is necessary to appoint a Chairman.

PRESIDENT: I nominate Mr. Subba Aiyar as the President of the Select Committee.

We will now proceed with the resolutions.

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